

HOUSE BILL 2483
By Sargent

AN ACT to amend Tennessee Code Annotated, Title 29,
relative to the use of eminent domain.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 17, is amended by adding
the following new part 13:

§ 29-17-1301. The general assembly takes notice of and reaffirms the right
guaranteed by the 5th and 14th amendments to the Constitution of the United States and
Article I, § 21 of the Constitution of Tennessee of an individual to privately own property
and for such property to be free from condemnation and taking by the government using
its power of eminent domain unless the taking is for a “public use”. The United States
Supreme Court in the case of Kelo v. City of New London, No. 04-108, 2005 WL
1469529, (U.S. June 23, 2005) has recently called into question the breadth and scope
of the definition of what is a “public use” sufficient to permit a government to invoke the
power of eminent domain to take private property. For this reason, the general
assembly finds it necessary and desirable to define the term “public use” in a manner
designed to provide greater protection to the rights of the individual private property
holder.

§ 29-17-1302. As used in this part, unless the context otherwise requires:

(1) “Eminent domain” is the inherent power of the government, or those to
whom the power has been delegated, to condemn and take private property
without the owner’s consent for public use conditioned upon the payment of just
compensation.

(2) "Individual" includes a natural person, corporation, partnership or other similar entity.

§ 29-17-1303.

(a) It shall not be a "public use" within the meaning of Article I, § 21 of the Constitution of Tennessee for a government, or other entity so authorized, to exercise the power of eminent domain to take the private property of an individual solely or primarily for the purpose of improving the tax revenue or the tax base of the condemning authority or for the sole or primary purpose of economic development.

(b) The provisions of subsection (a) of this section shall also preclude a governmental or other entity from condemning property through eminent domain for the purpose of selling, leasing, otherwise transferring or allowing the use of such property to a private developer, corporation or other private entity solely or primarily to attempt to increase tax revenue, expand the tax base, increase the taxable value of the property or to promote economic development.

§ 29-17-1304.

(a) Any individual who owns land that will be taken under a proposed exercise of the power of eminent domain by a governmental or other authorized entity may bring a cause of action for the purpose of determining if such taking is in violation of the provisions of this part.

(b) Such action shall be brought in the circuit or chancery court serving the county in which the property proposed to be taken is located. If within the jurisdictional limit, the action may be brought in the general sessions court of such county.

(c) Such action must be brought within one (1) year of the date on which the entity sends notice to the individual that the entity proposes to take the individual's land by use of the power of eminent domain.

(d) In determining whether a particular use of the power of eminent domain is being proposed for the sole or primary purpose of improving the tax revenue or the tax base of the condemning authority or for economic development and is therefore not a proper public use of such property, the provisions of this part shall be construed strictly and narrowly in favor of the private property owner whose land will be taken under the proposal. The burden of proof as to whether a particular proposed use of the power of eminent domain is for a legitimate "public use" and is not prohibited by this part shall be on the entity attempting to exercise such power.

(e) If an action is brought pursuant to this section, a proposed taking by an entity using the power of eminent domain shall not become final until the appropriate court renders a decision that the proposed taking does not violate this part.

§ 29-17-1305.

(a) Nothing in this part shall be construed to prohibit the use of eminent domain for legitimate community redevelopment such as slum clearance and the redevelopment of blighted and deteriorated properties as authorized by title 13, chapter 21.

(b) However, in construing this section and title 13, chapter 21, or any other provision of law authorizing the use of eminent domain for community redevelopment, it is the intent of the general assembly that the private property rights of residents and businesses who will have their property taken by eminent

domain be protected over the interests of private developers and corporations who may stand to gain from the exercise of such power.

(c) It is the further intent of the general assembly that the power of eminent domain to take property from private individuals for purposes of community redevelopment be used sparingly and that any such taking shall be strictly and narrowly construed for use solely on legitimate redevelopment projects and not for the reasons declared by this part to be outside the meaning of the term “public use”.

(d) If there is a conflict between the provisions of this section and any other provision of law authorizing the power of eminent domain for purposes of community redevelopment, this section shall control and be strictly construed for the purposes stated in this section.

§ 29-17-1306. If there is a conflict between any provision of this part and any other provision of law relative to what constitutes a “public use” for purposes of the constitutional exercise of the power of eminent domain under Article I, § 21 of the Constitution of Tennessee, the provisions of this part shall control.

SECTION 2. This act shall take effect July 1, 2006, the public welfare requiring it.